

TO: Deputy Chief

FROM: Investigator 1, Major Case Specialist
Supervising Investigator 1, Supervisor

DATE: November 15, 2017

REFERENCE: Log #1082645, U# 16-18

INCIDENT DATE/TIME: October 16, 2016, at approximately 8:55 p.m.

LOCATION: XXXX N. Cicero Avenue, Chicago, Illinois 60651

INVOLVED OFFICER #1: Officer C; H/M; Star: XXXXX; Emp. #XXXXXX; DOA: XXXXX 2007; DOB: XXXXX; On-duty; Uniform; Beat Assignment: XXXX.

OFFICER #1's WEAPON: Glock; model 17; 9mm; semi-automatic pistol; Serial #XXXXXX; Chicago Registration: XXXXX; FOID #XXXXXX; Department issued ammunition; Fourteen (14) live rounds recovered from firearm; Fired four (4) rounds; Magazine capacity is seventeen (17) plus one (1) in the chamber.

OFFICER #1's INJURIES: None reported

INVOLVED OFFICER #2: Officer A: W/F; Star: XXXXX; Emp. #XXXXXX; DOA: XXXX 2013; DOB: XXXXX; On-duty; Uniform; Beat Assignment: XXXX.

OFFICER #2's WEAPON: Glock; model 17; 9mm; semi-automatic pistol; Serial #XXXXXX; Chicago Registration: XXXXX; FOID: #XXXXXX; Department issued ammunition; Eight (8) live rounds recovered from firearm; Fired ten (10) rounds.

OFFICER #2's INJURIES: Scrape to knee

INVOLVED CIVILIAN: SUBJECT 1; B/M; DOB: XXXX 1989; XXXXX W. Kamerling Ave, Chicago, IL; CB# XXXXX; IR# XXXXX

INJURIES: Non-fatal; Gunshot wounds to the abdomen and right thigh. Treated at XXXX Hospital, Chicago, IL

WEAPON: Plastic black and chrome colored replica handgun w/ rust colored tape on the grip and slide.

I. SUMMARY OF INCIDENT

On October 16, 2016, at approximately 8:55 p.m., an employee of the Gas Station, located at XXXX N. Cicero Avenue, called 911 and reported a robbery in progress. Officer A, along with her partner, Officer B, were on routine patrol, near the Gas Station, in their unmarked police vehicle. Officer A and Officer B heard a dispatch call over the radio of a robbery in progress and drove northbound on Cicero Avenue to respond to the incident.

Officer C and his partner, Officer D, also responded to the location of incident in their marked police vehicle after they heard a radio call of an armed robbery. Officer C and Officer D were driving southbound on Cicero Avenue on routine patrol at the time the dispatch call was announced.

The Gas Station consists of several gas pumps on the north and south side of the property and a minimart in the center of the lot. Upon arrival, Officer A and Officer B parked their vehicle on the east side of Cicero Avenue, near the north end of the Gas Station. Almost simultaneously, Officer C and Officer D arrived at the Gas Station and drove into the south parking lot area, near the gas pumps, and parked alongside the south entrance door of the minimart.

Officer A and Officer B approached the north door of the minimart and as they arrived to the north door, Officer A and Officer B observed a Hispanic female customer and Subject 1 with an object that appeared to be a firearm in his hand. Officer B began to yell “gun” and both Officer A and Officer B began to retreat as they both drew their weapons.

Simultaneously, Officer C exited his police vehicle and walked up to the south door entrance at which time he observed Subject 1 inside of the minimart, standing near a counter. As Officer C opened the south door of the minimart, he observed Subject 1 holding an object that appeared to be a firearm. Subject 1 immediately turned and pointed his firearm in Officer C’s direction. Officer C discharged his weapon at Subject 1 four (4) times.

Meanwhile, as Officer A heard gunshots, she responded by discharging her weapon multiple times, including in an upward direction, while retreating in a northeast direction in the north parking lot area. After the shots were fired, Officer C disarmed Subject 1 and multiple officers assisted in placing Subject 1 into custody. The object that Officer A and Officer C believed to be firearm t was recovered inside of the minimart and was later determined to be a replica firearm. Subject 1 was taken to Stroger Hospital for medical treatment.

II. INVESTIGATION¹

The Independent Police Review Authority (IPRA) obtained relevant video, forensic, and documentary evidence associated with this incident. IPRA interviewed civilian witnesses, the involved officers, as well as the other officers in the vicinity at the time of the incident.

The following is a summary of the evidence obtained and analyzed by IPRA, and now the Civilian Office of Police Accountability (COPA), in this investigation:

A. Interviews

1. Victim/Subject Interview:

Attempts to contact and interview victim/subject, **Subject 1**, via letter sent on October 25, 2016, was met with negative results. (Att.48)

On November 4, 2016, Subject 1 executed a Refusal to Talk with Independent Police Review Authority form and exercised of his Fifth Amendment right against self-incrimination pursuant to the advice of his criminal counsel, Attorney 1 (Att. 66)

2. Civilian Witnesses Interviews:

On October 17, 2016, at approximately 8:45 a.m., an **Electronic Recorded Interview (ERI)** took place of Civilian 1 by CPD at Area North headquarters. Civilian 1 was interviewed by Assistant State's Attorney 1 and Detective A. The following is a summary and not a verbatim account of the statement provided by Civilian 1.

Civilian 1 stated that on the date and time of incident, she entered the minimart of the Gas Station to make a purchase. Upon entering the north door, she observed a tall, "chubby" black male, now known to be Subject 1, holding an object in his hand. Civilian 1 stated she went to the back of the store to find her item. Civilian 1 realized that Subject 1 was holding a gun² and also heard him yelling at the clerk, who was behind an enclosed booth, to "open up." At that time, Civilian 1 walked towards the north entrance in an attempt to leave. Civilian 1 did not see the clerk. Civilian 1 stated that she told Subject 1 that she "did not want to be involved" and asked Subject 1 to allow her to leave, to which Subject 1 responded with only a blank stare back.

An unknown male black customer then entered the minimart. The male customer appeared not to have initially noticed the incident taking place. Civilian 1 stated that the unknown male attempted to make a purchase, but the clerk was not visible. The unknown black male customer offered the money to Civilian 1, but Civilian 1 told him to leave it on the counter

¹ On September 15, 2017, the Civilian Office of Police Accountability (COPA) replaced the Independent Police Review Authority (IPRA) as the civilian oversight agency of the Chicago Police Department. Thus, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendation(s) set forth herein are the recommendation(s) of COPA.

² Civilian 1 referred to the replica firearm as a gun.

and then the unknown male exited. Subject 1 then approached Civilian 1. She requested again that he allow her to leave. Shortly thereafter, Subject 1 struck Civilian 1 on the left side of her face with his gun. Civilian 1 took a few steps back and then called the police and relayed to dispatch the situation. Subject 1 remained standing near the cash register while Civilian 1 was a few steps away from the cashier and the north entrance.

Civilian 1 then heard the north entrance door open and observed a female officer in uniform at the door. The female officer began to repeatedly yell, "he has a gun." Civilian 1 began to retreat to the back (the east side wall) of the minimart. Civilian 1 then heard the opposite entrance open and a male officer began to repeatedly yell words to the effect of "put the gun down" followed by two to three gun shots. Civilian 1 could not see what was happening at the front of the store.

Civilian 1 did not observe shots being fired and did not know who discharged their weapon. After the gunshots, Civilian 1 observed several officers inside of the minimart and observed Subject 1 lying on the ground, facing the north entrance. Civilian 1 witnessed a female officer locate Subject 1's gun.

Civilian 1 identified and confirmed a photograph of the Gas Station where the incident occurred. She also identified the subject of a photograph as the person who struck her with a gun. Civilian 1 also identified and confirmed a photograph of the gun used to strike her. (Att. 29, 43)

In a statement to IPRA dated October 28, 2016, **Civilian 1** provided substantially the same information as in her ERI to CPD. In addition, Civilian 1 described that when she first arrived at the minimart of the Gas Station and observed Subject 1, she saw him holding an object in his hand and recognized it to be a gun. Civilian 1 further described the gun to have "tape or something around it" and believed that it did not look real.

Civilian 1 described Subject 1's demeanor as appearing to be without emotion. Civilian 1 described that it appeared that Subject 1 had a wet spot on his pants, near his private area, and she assumed it to be blood. Furthermore, Civilian 1 stated that Subject 1 struck her on her face with his gun after he had asked her what she had in her pockets and she showed him a lighter. Civilian 1 repeatedly asked Subject 1 if she could leave and he did not respond. Civilian 1 did not leave on her own free will because she did not know how Subject 1 would react.

After Subject 1 struck her, she began to walk backwards and subsequently called the police. Shortly thereafter, the north door was opened and Civilian 1 observed a white female officer standing outside of the north door. Civilian 1 recalled seeing the female officer holding a gun but did not recall how she was holding it. According to Civilian 1, Subject 1 was facing the direction of the north door when the female officer began to yell words to the effect of "he has a gun" while walking backwards. As the north door began to close, the south entrance door suddenly opened. Civilian 1 heard a male voice say words to the effect of "put your gun down." Civilian 1 stated that she no longer had view of either door nor Subject 1 as she continued to retreat down the aisle. Subsequently, Civilian 1 heard approximately two to three gun shots that sounded to be coming from inside of the minimart, from the south side. Civilian 1 did not hear any further gun shots. (Att. #41)

On October 17, 2016, at approximately 8:19 a.m., an **ERI** took place of **Civilian 2** by CPD at Area North headquarters. Civilian 2 was interviewed by Assistant State's Attorney 1 and Detective A. The following is a summary and not a verbatim account of the statement provided by Civilian 2.

Civilian 2 stated that on the date of incident, he was working as a cashier, inside a bullet-proof booth, at the Gas Station. Civilian 2 also identified a photograph, shown by Assistant State's Attorney 1, of the Gas Station where he worked.

Civilian 2 stated that he was assisting a customer with lottery tickets when the subject, now known as Subject 1, entered the minimart portion of the Gas Station he was working at. Subject 1 pointed a gun³ at Civilian 2 and banged on the glass with the gun while repeatedly yelling "motherfucker" and "open the door." Civilian 2 ducked down behind the counter and called 911. Civilian 2 remained on the phone with 911 while waiting for them to arrive. While on the phone, Civilian 2 peeked over the counter and observed an unknown female customer inside. Shortly thereafter, an unknown male customer entered the minimart and made a purchase by selecting an item and passing money through the turn-style. After the male customer exited, Civilian 2 observed Subject 1 strike the female customer's face with the same hand he carried his gun in.

After Subject 1 struck the female, he continued to yell for Civilian 2 to "open the door" and point his gun towards the booth. Civilian 2 remained crouched down on the phone when he heard gunfire. Civilian 2 heard approximately two to three shots in rapid succession. After the gunfire stopped, Civilian 2 stood up and observed several police officers inside of the minimart. (Att. 30, 47)

In a statement to IPRA dated November 14, 2016, **Civilian 2** provided substantially the same information as in his Electronic Recorded Interview with CPD. In addition, Civilian 2 stated that at no time did he observe anyone discharge their weapon and only heard three to four gun shots but had no knowledge as to where they came from. (Att. #45)

3. Witness Officer Interviews:

In a statement to IPRA dated October 18, 2016, **Police Officer B** stated that on October 16, 2016, she was the passenger of an unmarked Crown Victoria vehicle and her partner, Officer A, was the driver. Officer B had not met Officer A before the date of this incident. Officer A and Officer B were assigned to a cigarette enforcement team out of the 25th District. Officer B was working an overtime initiative on the third watch. Officer B was in full police uniform and assigned to beat XXXX. While monitoring Zone 10⁴ radio communications, she heard a call of an armed robbery, "just down the street" from their location, at the Gas Station on Augusta and Cicero. Dispatch stated that "one male was inside and one male was outside."

³ Civilian 2 referred to the replica firearm as a gun.

⁴ Zone 10 is in reference to designated police area or district(s) for radio communication.

Officer A drove to the Gas Station on Cicero and parked on the east side of the street and slightly northwest of the Gas Station. Officer A and Officer B did not activate emergency sirens as they responded to the scene, however, upon arrival to the scene, Officer B radioed in their location. Before exiting their vehicle, Officer B looked for a person standing outside the Gas Station, but did not see anyone. Officer B then walked towards the north door of the Gas Station. Officer B stated that Officer A was somewhere behind her, but she did not know her exact position. As Officer B approached the north door, she observed people inside the minimart at which time she unholstered her weapon. Officer A saw a Hispanic female standing where the aisles and pay counter meet, near the north door. The woman was staring at Officer B with a “scared look” on her face. Officer B also saw the back shoulder and head area of a taller, larger man, now known to be Subject 1. Her view was partially obstructed by a pole and wall. Officer B could not see Subject 1’s hands.

Officer B reached to open the north door with her left hand, at which point Subject 1 turned his body toward her. While approximately five feet from Subject 1, Officer B observed a firearm in Subject 1’s right hand pointed down at his side. According to Officer B, she saw the black slide and sights of the gun, as well as brown packing tape on the handle. Officer B yelled “gun” and let the door go to start back pedaling⁵ in a northwest direction. Officer B began yelling for Subject 1 to “drop it” and yelled “gun” to inform her partner. Subject 1 did not drop the gun nor did he lift it but rather was “kinda swaying it around” while looking around. As Officer B was walking backwards, she was pointing her gun at Subject 1, yelling “gun”, while attempting to retrieve her radio.

As Officer B continued to walk backwards, she observed Officer A approximately fifteen feet east of the door, walking backwards⁶ to the northeast corner of the Gas Station with her gun in her right hand. Suddenly, Officer B heard gunshots and observed Officer A firing her weapon towards the direction of the “building.” According to Officer B, as Officer A was firing her weapon she continued to move backwards when suddenly she tripped and stumbled at which time her firearm was then pointed upward towards the air. Officer B did not observe Officer A completely fall to the ground. Officer B stated that she believes she saw a “muzzle flash” come from Officer A’s gun as she stumbled backwards after she tripped. Officer B stated that she heard additional gunshots coming from inside the Gas Station. Officer B continued to move westbound where she attempted to take cover near an ice machine near the west external wall of the minimart. As Officer B was attempting to take cover she lost sight of Officer A.

Officer B heard a total of approximately ten to fifteen gunshots and did not know where the first gunshots came from. Officer B described that cadence of the shots fired as being “all successive, kind of at the same time.” Once the gunshots stopped, Officer B looked inside the minimart and observed that Subject 1 was on the ground and other unknown officers were trying to handcuff him. Officer B then re-holstered her weapon and entered the Gas Station. Officer B observed the same gun that Subject 1 was holding, in an aisle on the floor near beverage coolers. She also observed a what appeared to be a firearm magazine in the aisle. Officer B stood over the gun as other officers were struggling to handcuff Subject 1 as he was lying on his left side with his left arm tucked underneath him.

⁵ Officer B was walking backwards as she was retreating.

⁶ Officer A was moving backwards as she was retreating.

Officer B stated that she did not fire her weapon because a civilian was standing right next to Subject 1 and there were too many obstructions. Officer B did not feel she had a clear shot and was trying to create some distance. (Att. 58, 59)

In a statement to IPRA dated October 18, 2016, **Police Officer D** stated that on October 16, 2016, he was working overtime on a saturation mission concentrated in the 15th district. His partner was Officer C. Officer D was in uniform and was the passenger of their marked Crown Victoria squad car. Officer D and Officer C were assigned to beat XXXX.

While Officer D and Officer C were traveling southbound on Cicero at Division, a radio call came out for a robbery in progress at Augusta and Cicero. The dispatch stated that there were possibly two offenders. Officer D and Officer C were able to respond to the scene in less than one minute. Officer D and Officer C did not activate the emergency equipment on their vehicle because traffic was clear in front of them.

Upon arriving at the station, Officer D saw an unmarked police vehicle on the east side of Cicero facing northbound. Two female police officers exited the vehicle and were approaching the north side of the Gas Station.⁷

Officer D and Officer C drove to the south end of the Gas Station because there were two different doors on either end of the Gas Station. Officer D and Officer C parked their squad car approximately fifteen feet from the south entrance of the minimart and exited their vehicle.

According to Officer D, as he looked towards the south entrance of the minimart, he could see the clerk inside on the phone, behind a glass window. Officer D observed a second person standing near the counter and a third person near the north door of the minimart. Officer D no longer had sight of the two female officers. As Officer D approached the minimart, he heard approximately three gunshots. He responded by crouching down.

At the time Officer D heard the first gunshots, he stated that Officer C was “maybe six [or] seven feet,” ahead of him, positioned at the south door of the minimart. Officer D did not know where the initial gunshots came from. He then observed Officer C crouching down and fire his weapon twice. Officer D saw the muzzle flashes from Officer C’s firearm. When Officer D crouched down, he no longer could see into the minimart because there was a brick wall below the window.

After the shots fired came to an end, Officer D followed Officer C into the minimart. While inside, Officer D and Officer C attempted to place Subject 1 in custody who was laid chest down on the ground. Subject 1 ignored verbal commands and resisted the officers in that he stiffened his body, failed to give up his right hand, and was attempting to reach into his pocket. As Officer C and Officer D continued to attempt to detain Subject 1, Officer C yelled out that he had kicked the gun away. Shortly thereafter, responding officers arrived and assisted Officer C and Officer D in placing Subject 1 into custody.

⁷ The two female officers were later identified as Officers B and A.

Officer D never saw Subject 1 holding a gun. After placing Subject 1 into custody, Subject 1 was rolled over and Officer D saw blood below Subject 1's torso. Officer D did not search Subject 1 and did not observe him being searched.

After the incident, Officer D stated that he had observed shell casings on the opposite side of the building and evidence markers inside the door of the building. At no time did Officer D see any other officers discharge their weapon. (Att. 60, 61)

4. Involved Officer Interviews:

In a statement to IPRA dated November 10, 2016, **Police Officer C** stated that on October 16, 2016, he was regularly assigned to the 25th District⁸ on a saturation team. Officer C was on duty working overtime with a violence reduction initiative assigned to the 15th District.⁹ His partner was Officer D and their beat was XXXX. Officer C was in uniform and they were in a marked Chevy Tahoe. Officer C was the driver.

Officer C and Officer D were driving southbound on Cicero at Division when a radio call came out of an armed robbery in progress at the Gas Station with two gunmen. Officer C and Officer D responded to the location within seconds. While en route Officer C did not activate the emergency equipment of his police vehicle. Officer C explained that he did not turn on the emergency equipment because he did not want to alert any offenders on scene that they were several blocks away and give them an opportunity to get away.

Upon arrival to the Gas Station, Officer C observed a police vehicle, described as a Crown Victoria, arrive at approximately the same time facing northbound on Cicero. Officer C did not observe the officer(s) inside of the vehicle. Officer C drove into parking lot and parked approximately ten feet away from the south door, but not directly in front of it.

Officer C exited his vehicle and walked toward the entrance of the minimart. Upon approaching the south entrance, he looked inside of the minimart and observed an individual matching the description of the offender given over the radio,¹⁰ now known to be Subject 1. Subject 1 was standing inside of the minimart, in front of the clerk station and he was approximately five feet from the south entrance. Officer C could not see the clerk.

Officer C opened the door, stated words to the effect of "What's going on over here?" and then observed Subject 1 with a gun in his hand. Officer C described seeing the black slide of the gun. According to Officer C, it was at this time that Subject 1 then turned towards Officer C and raised his gun, which was in his hand, chest level while pointing it towards Officer C' face and chest. Officer C stated that he did not have an opportunity to take cover because he was already inside the Gas Station and there was nowhere for him to go at that point. Officer C responded by shooting his firearm in the direction of Subject 1 because he was in fear for his life and his partner's life.

⁸ The 25th District is located at 5555 W. Grand Avenue.

⁹ The 15th District is located at 5701 W. Madison Street.

¹⁰ Refer to OEMC transmissions under Att. # 16 and Event Queries under Att. #14 in which the offender of the robbery was described to be wearing all black.

Officer C believed that at the time of incident, he fired four (4) shots. Officer C described that Subject 1 responded to shots being fired by bending down to one knee while still holding his firearm in his hand. Officer C also dropped down to one knee and repeatedly yelled at Subject 1 to “drop it.” However, Subject 1 did not comply. Officer C described that while Subject 1 was on one knee, Subject 1 braced himself with his “gun hand” on the floor. At that time, Officer C felt that he had an opportunity to disarm Subject 1. Officer C ran up to Subject 1 and began to strike Subject 1’s hand that was holding the gun with the grip of his own gun until Subject 1 released it. At that time, Officer C kicked Subject 1’s gun away from them. Officer C stated that while striking Subject 1’s hand, the magazine of the gun came out.

After Officer C kicked the gun away, he and Officer D attempted to handcuff Subject 1 who was resisting in that he failed to surrender one of his arms that was underneath his body. Officer C described that Subject 1 was lying on his stomach with one arm extended straight down, underneath his body and it appeared that he was trying to reach into his right pocket with his right arm. Subsequently, Officer C managed to handcuff both of Subject 1’s hands at which time he observed blood on Subject 1’s legs and groin area. Officer C stated that Subject 1 was searched for additional weapons, but that none were located.

After Subject 1 was placed into custody, Officer C was escorted out of the Gas Station and seated in a police vehicle belonging to Sergeant A. Officer C did not have any further contact with Subject 1.

According to Officer C, prior to, during and after discharging his weapon, he did not hear any other shots being fired. Officer C stated that Subject 1 never discharged his weapon and later found out that it was a replica gun.

Officer C described Subject 1’s demeanor as under the influence¹¹ due to Subject 1 neither verbally nor physically displaying any pain, at any point during the time of incident. (Att. 62, 63)

In a statement to IPRA dated November 17, 2016, **Police Officer A** stated that on October 16, 2016, she was on duty working a violence reduction initiative (VRI). The VRI was an overtime assignment and she was in uniform. She and her partner, Officer B, were patrolling in the 15th District with a perimeter of Laramie and Cicero, to the east and west; and Division and Chicago, to the north and south. Officer A was assigned a body worn camera (BWC) for her regular work assignment, but did not wear one on the day of the incident. She explained that when she works VRIs, she does not wear a body camera. She further stated that none of the members working a VRI wear a body camera. According to Officer A, she didn’t wear a BWC because she is not aware of any policy or order requiring it to be worn during a VRI assignment. She also stated that she is unaware of any policy directing members not to wear a BWC during a VRI assignment.

¹¹ Officer C did not specify what he believed Subject 1 was under the influence of, but stated that he later learned other officers found Subject 1 in possession of PCP.

Officer A was the driver of an unmarked Crown Victoria and they were parked in a parking lot at Walton and Cicero when dispatch called out a robbery in progress. Dispatch provided descriptions of two male offenders. Officer A remembered one description as a heavy set black male wearing a hoodie, with a gun. Officer A then drove to the location of the robbery at Augusta and Cicero. En route to the scene, Officer A asked Officer B to turn on the emergency lights of the vehicle, but does not remember if Officer B activated the emergency lights. When Officer A and Officer B arrived at the scene a few seconds after hearing the dispatch, Officer A parked their vehicle northwest of the Gas Station for tactical purposes. Neither Officer A, nor Officer B transmitted a radio message that they were responding to the scene.

As Officer A and Officer B approached the Gas Station there was an unoccupied gray civilian vehicle parked on the west wall of the Gas Station. Officer A stated that there was no one on the other side of the Gas Station and that they were the only ones on scene. Officer A did not hear any voices or see any other officers at the location. As Officer A and Officer B approached the north door of the Gas Station, Officer B went to the west side of the north door and Officer A went to the east side. As Officer A approached, she could see through the window into the Gas Station because the door of the minimart and half the building was made of glass. Officer A stated that through the glass she saw a man, now known to be Subject 1, fitting the description provided by dispatch¹² standing inside the Gas Station holding a gun. She also saw a Hispanic woman, who she believed to be a civilian, standing in front of Subject 1 facing him. Officer A could see Subject 1's whole body however at this point Subject 1 was facing the female, therefore Officer A's view is of his entire side as he faces east.

Officer A saw the gun in Subject 1's hand and yelled at Subject 1 to "Drop the gun. Let me see your fucking hands. Let me see your fucking hands." Officer A stated that she could see the "dark frame of the gun." As Officer A yelled commands, she had her weapon drawn and pointed in Subject 1's direction. However, Officer A does not recall when she unholstered the weapon. Officer A lost sight of the female that was inside the minimart, but saw Subject 1's left shoulder move and then heard multiple gunshots start coming. Officer A started firing in Subject 1's direction. Officer A stated that she began firing because she thought at that time that Subject 1 was either shooting at the civilian or he was shooting at her or Officer B.

As Officer A was shooting, she was creating distance by moving back. As Officer A was retreating she tripped and fell backwards. As she was falling backwards, her gun was pointed upward because she was struggling to maintain balance and she unintentionally discharged her weapon several times. When Officer A was already on the ground, with her knee, and her hand, positioned on the ground, the shots stopped. Officer A then got up and holstered her weapon.

When Officer A stood up, she reached for her radio and attempted to make a call of "Shots fired", however, she was unclear if this transmission ever went through. Officer A then saw Officer B running from behind a fixed object on the northwest corner of the minimart. Officer B ran inside the minimart and Officer A followed her. Officer A walked in and saw multiple officers on top of Subject 1. They had one arm in handcuffs and were struggling for Subject 1's other arm because he was still holding onto it.

¹² Refer to OEMC transmissions under Att. # 16 and Event Queries under Att. #14 in which the offender of the robbery was described to be wearing all black.

Officer A was taken to the Hospital for treatment of minor scrapes and abrasions. When Officer A went to the hospital, she spoke to an unidentified Detective¹³ from Area North about the incident. After returning to the scene from the hospital, Officer A spoke to the OCIC about the incident.

B. Department Reports

According to **Arrest Report, XXXXXXXX**, Subject 1 was listed as an offender charged with Armed Robbery, Aggravated Assault of a Police Officer, Resisting Arrest, and Possession of a Controlled Substance. The date of incident was October 16, 2016 at 20:55 hours at XXXX N. Cicero. The report narrative states that Subject 1 was taken into custody after pointing a firearm at Officer C. Officer C gave Subject 1 verbal directions to drop the weapon. Subject 1 failed to comply and Officer C discharged his weapon striking Subject 1. Officer C disarmed Subject 1 and attempted to place Subject 1 into custody. Subject 1 pulled away from Officer C and other units assisted in placing him into custody. Subject 1 was then transported to Stroger Hospital via CFD ambulance. (Att. 5)

An **Original Case Incident Report, XXXXXX, Event #XXXXXX**, documents the date of occurrence as October 16, 2016, and the location at XXXX N Cicero Ave, a Gas and Food Mart. The report lists victim information, witness information, suspect information and responding officer information. (Att. 6)

Detective Supplementary Reports XXXXXX document information collected and reported by CPD regarding the October 16, 2016, police-involved shooting of Subject 1. Such documentation includes but is not limited to; a field investigation “Method/CAU” report identifying all involved parties, field investigation laboratory reports documenting evidence and analyses conducted by the Forensic Science Center, a field investigation Canvass report; and, a “Cleared/Closed (Arrest and Prosecution)” report that documents the assigned Detective(s) closed supplementary report of investigation. It is noted that all Detective Supplemental Reports are to be read in conjunction with one another. (Att. 7, 89)

A **Tactical Response Report (TRR)**, prepared by **Officer C**, documents that the incident occurred on October 16, 2016, at 20:55 hrs. The incident location was XXXX N. Cicero Ave. Officer C was on duty and in uniform. He was not injured in the incident. The subject was Subject 1, a black male. Subject 1 was armed with a semi-automatic pistol and was injured by Officer C.

Officer C reports that Subject 1 did not follow verbal direction and stiffened his body. He further reports that Subject 1 presented an imminent threat of battery in that he pointed a firearm at Officer C. In response, Officer C reports that he provided his presence and gave verbal commands, used an impact weapon and his firearm.¹⁴ Officer C discharged his Glock 17 9mm

¹³ According to a Detective Supplemental Report, Officer A spoke to Detective B.

¹⁴ In his statement to IPRA, Officer C admitted that he mistakenly wrote that he provided verbal commands in the TRR and that he did not provide any verbal commands until after he discharged his firearm.

pistol four (4) times. Officer C fired the first shot, drew the handgun from his strong side, did not use his sights, and was standing approximately 0-5 feet away from Subject 1 when he discharged his weapon. (Att. 8)

An **Officer Battery Report (OBR)**, prepared by **Officer C**, documents that on the date, time, and location of the incident, Officer C was on-duty, in uniform, and investigating a report of an armed robbery. The report states that Subject 1 was in possession of a firearm which he pointed at Officer C after ignoring verbal commands to drop the weapon. After Officer C fired on and struck Subject 1, Subject 1 refused to drop the weapon and Officer C used his firearm as an impact weapon to dislodge the handgun from Subject 1's grip. Officer C did not sustain any injuries.. (Att. 9)

A **Tactical Response Report (TRR)**, prepared by **Officer A**, documents that the incident occurred on October 16, 2016 at 20:55 hrs. The incident location was XXXX N. Cicero Ave. Officer A was on duty and in uniform. She was injured in the incident. The subject was Subject 1, a black male. Subject 1 was armed with a semi-automatic pistol and was not injured by Officer A.

Officer A reports that Subject 1 did not follow verbal direction. Officer A further reports that Subject 1 presented an imminent threat of battery in that he refused to disarm himself. In response, Officer A reports that she provided her presence, gave verbal commands, and used her firearm. Officer A discharged her Glock 17 9mm pistol ten times. Officer A did not fire the first shot, drew the handgun from her strong side, used her sights and was standing approximately 05-10 ft away from Subject 1 when she shot at him. Officer A's rounds struck an object and not Subject 1. (Att. 10)

A **Major Incident Notification Report (MIN)** documented the same or substantially the same information as the Original Case Report, Detective Supplemental Report, TRRs and OBR. In addition, the MIN report documents that Subject 1 entered the Gas Station and announced a robbery while displaying a handgun. Subject 1 then battered a patron and attempted to gain access to the cashier's booth but was unsuccessful. Responding officers entered the Gas Station and confronted Subject 1. Subject 1 refused to comply with officers' commands to drop the weapon and subsequently pointed the handgun at the officers. One of the officers, fearing for his safety as well as the safety of his partner, the patron and employee, fired his weapon at Subject 1 striking him multiple times. Other officers arriving at the same time and approaching the Gas Station toward a different entrance witnessed Subject 1 inside the station holding a weapon. One of these officers discharged her weapon after she heard multiple shots coming from the interior of this Gas Station. Subject 1 was subsequently placed into custody and then transported to Cook County Hospital regarding his injuries. During the processing of this crime scene it was determined that the weapon that Subject 1 was in possession of was a replica firearm. (Att. 38)

An **OEMC Event Query Report** documents that the location of service was XXXX N. Cicero Ave. At 20:54:49 someone was still inside the Gas Station. At 20:54:54 officers were on scene. At 20:55:08 shots were fired by the police. The remainder of the record documents the

search for a second offender,¹⁵ traffic control at the scene and other medical service request and response. (Att. 14)

CPD Crime Scene Processing Report XXXXX, completed on October 17, 2016, documents the evidence identified, collected, and inventoried in connection with the incident. In addition, it is documented that while on scene, the Forensic Investigator (FI) performed an administrative check of Officer C' magazine in the presence of Officer C, Detective C, IPRA Investigator 1,¹⁶ FOP Representative 1 and Deputy Chief A which showed there were thirteen (13) cartridges in Officer C's magazine.¹⁷

After the evidence collection and processing on scene, the FI went to Area North to recover and clear the weapon of Officer C and Officer A.¹⁸ The FI photographed Officer C and Officer A, to include her injuries. The FI then went to the Hospital to process and photograph Subject 1 and his belongings. The FI then returned to unit #XXX and swabbed both officers' weapons. (Att. 21)

C. Medical Reports

A Chicago Fire Department Ambulance Report, under **Incident #XXXXXXX**, documents that Ambulance XX arrived at the scene on October 16, 2016, at 8:58 p.m. Subject 1 was found lying on his back in the Gas Station, handcuffed and in CPD custody. It is further documented that CFD personnel treated Subject 1 for gunshot wounds and noted him to be alert but weak. While in the ambulance, three (3) small plastic baggies, each containing an unknown substance wrapped in tin foil, along with a lighter fell from his jeans pocket. Subject 1 was transported to Stroger Hospital at 9:13 p.m. (Att. 19)

Medical Records from Cook County Health and Hospitals System¹⁹, documents that **Doctor 1** attended to Subject 1 on October 16, 2016. Doctor 1 documented that Subject 1 was suffering from a gunshot wound of the abdomen and a gunshot wound of the right thigh. Subject 1's mental state was noted as in a "decreased" or "depressed" mentation (slow response or depression). Subject 1 was discharged to Cook County Department of Corrections Cermak Hospital on October 18, 2016. (Att. 52)

An IAD Synoptic Report documents that Officer A and Officer C were given alcohol and drug testing. Both officers submitted to breath testing that resulted in a reading of .000 Br.A.C.²⁰ Both officers submitted to urine drug analysis which returned negative results. (Att. 26)

D. Other Documentary Evidence

¹⁵ A second offender was never located.

¹⁶ Since the transition from IPRA to COPA, Investigator 1's title has changed to Major Case Specialist.

¹⁷ Inventory Sheet #XXXXXXXX documents thirteen (13) cartridges in the magazine and one (1) in the chamber. Refer to Attachment #22.

¹⁸ Refer to Attachment #57.

¹⁹ Subject 1 was taken to the Hospital which is within the Cook County Health and Hospitals System.

²⁰ This is an acronym for Breath Alcohol Content.

1. IPRA Reports

An **Investigative Report** prepared by IPRA Investigator 2²¹ documented that on October 16, 2016, at approximately 10:44 p.m., he telephoned Stroger Hospital and spoke to Doctor 2 of the Trauma Unit. Doctor 2 stated that Subject 1 was in surgery and in critical condition and could not be interviewed. In a follow-up telephone call, Investigator 2 spoke again to Doctor 2, who stated that Subject 1 had sustained one gunshot wound to the abdomen and four gunshot wounds to the leg. Doctor 2 described the injuries as life-threatening. (Att. 11)

An **Investigative Report**, prepared by IPRA Investigator 3²², documented the processing of Officer C and Officer A's firearms on October 17, 2016, at approximately 2:42 a.m. (Att. 57)

A **Canvass Report**, prepared by IPRA Investigator 4,²³ documented that on October 17, 2016, beginning at approximately 10:00 a.m., he and Investigator 5²⁴ canvassed XXXX-XXXX North Cicero Avenue and XXXX-XXXX West Cortez Street relative to this incident.

At the location of the former XXXXXX Grill, XXXX North Cicero Avenue, now closed and no longer in business, IPRA Investigator 4 spoke with a male who answered the door and would only identify himself as "Civilian 3." Civilian 3 said there were no exterior cameras, and that he was not at there at the time of the incident. Civilian 3 said XXXXXX , next door at the corner, had cameras but sustained a fire two weeks ago and had been closed since. IPRA Investigator 4 did not see any visible exterior cameras.

XXXXX Food & Liquor, XXXX North Cicero Avenue, was not open and had visible fire damage to its exterior. An exterior camera was located on the Augusta Boulevard side of the building that appeared to be pointed downward toward the northwest corner of Cicero Avenue and Augusta Boulevard, appearing to capture the area at the liquor store entrance. A sign on the building indicated the building was managed by Civilian 4.

In the alley behind XXX West Cortez Street a male and female were seated on a ledge. They said they were aware of the incident and "heard shots" but neither would provide their names or provide additional details. This location is a brick courtyard building with a wrought iron fence and secured gate. Investigator 4 and Investigator 5 attempted the call box for different residents but no one answered. A resident exited the building and identified himself as Civilian 5 of XXXX West Cortez Street Apt. XX. He said he learned about the incident from the news. He said he was home but had the Cubs game on the television and the volume up high so did not hear anything. A sign on the building said it was managed by XXXXX Apts., XX South Austin Boulevard, XXX-XXX-XXXX. (Att. 12)

2. Illinois State Police (ISP) Forensic Laboratory Reports

²¹ Since the transition from IPRA to COPA, Investigator 2's title has changed to Major Case Specialist.

²² Since the transition from IPRA to COPA, Investigator 3's title has changed to Major Case Specialist.

²³ Since the transition from IPRA to COPA, Investigator 4 is now a Supervising Investigator.

²⁴ Since the transition from IPRA to COPA, Investigator 5's badge number has changed to #XX.

An ISP Laboratory Report, dated October 19, 2016, documents that “0.4 gram of plant material from one foil packet” that was found on Subject 1 on the date of incident, was determined to be “Phencyclidine (PCP); Not Cannabis.” Furthermore, “an estimated 0.9 gram of plant material from two foil packets” was “not analyzed.”

An ISP Laboratory Report, dated December 2, 2016, documents that Officer A’s gun, a Glock, model 17, 9mm Luger caliber semiautomatic pistol, Serial #PHP435, was examined and found it to be operable. ISP examined Officer C’ gun, a Glock, model 17, 9mm Luger caliber semiautomatic pistol, Serial #SSW604 and found it to be operable.

An ISP Laboratory Report, dated December 7, 2016, documents that one (1) black magazine with no identifiers, and; one (1) “pistol” (described as a replica handgun under Inventory #13786447) belonging to Mr. Subject 1 were examined and revealed no latent impressions suitable for comparison. (Att. 91)

3. Photograph, Video & Audio Evidence

Video Surveillance Footage from the Gas Station located at XXXX N. Cicero depicts video from six cameras located at different positions inside the Gas Station minimart. The video was recorded on one DVD and consisted of six video files labeled Camera 1, Camera 2, Camera 3, Camera 4, Camera 6, and Camera 7. These videos do not contain audio.²⁵ The most material portions of the video surveillance footage are documented in the chart listed below:

<u>Camera No.</u>	<u>Area Covered</u>	<u>Recording File # / Time Stamp / Event Description</u>
1	View of a small section of the interior of the Gas Station store. The video starts at 20:40:00 hours.	<p>At 20:51:05 a Hispanic female wearing black, comes in and out of view near the refrigerated cases.</p> <p>At 20:54:30 a white vehicle appears through the window and a uniformed male officer enters through the glass door. The male officer stops in the doorway and draws his weapon pointing it forward from his position. Smoke is seen coming from the officer’s weapon as he fires, then the officer immediately crouches down. The male officer then moves forward in the direction he was pointing his weapon and steps out of view.</p> <p>At 20:54:52 an object that appears to be a handgun is observed sliding across the floor of an adjacent aisle and stops near the bottom of a refrigerated case. Another uniformed male officer is seen entering through the glass door and moving towards the first officer.</p>

²⁵ The COPA Investigator who summarized the video footage, under Attachment #32, refers to the various interior views as the “store” and “office” in the report.

		At 20:55:08 a uniformed female officer enters the view of the camera and stands over the object that appears to be a handgun near the refrigerated cases, then moves towards the other officers. Shortly thereafter several other officers arrive.
2	View of the interior, point-of-sale office. The video starts at 20:48:00 hours.	At the start of the video, a male employee is observed inside a glass point-of-sale office moving in and out of camera view. Shortly thereafter, the male employee is observed crouched down while speaking on a cellular phone. Movement is visible outside of the glass, but the view is obstructed by shelving and hanging items.
3	Partial view of the interior of the point of sale office with the opposite viewing angle of Camera 2. A turnstile is observed at the office window. The video starts at 20:48:00 hours.	At 20:49:00 a male black individual in a dark colored jacket is seen outside the office window in front of the revolving turnstile, and then moves out of view. The male employee begins to speak on his cellular phone and crouches behind the counter. At 20:50:20 the same male black subject reappears at the office window and the male employee is seen preventing the turnstile from being turned. The subject sticks an object into the opening of the turnstile and points it at the employee. The subject then moves in and out from view while the employee remains crouched down. At 20:54:40 the male black in the dark colored jacket returns to the window, appears to raise his right arm towards the south entrance, and then falls to the floor. ²⁶
4	Partial view of the interior of the store. The video starts at 20:48:10 hours.	At 20:48:57 a male black subject wearing a black hooded jacket with a gray stripe on the sleeves, and jeans, enters through the door and is seen moving outside of view. At 20:51:00 the same male black subject is observed holding a black and silver object, which appears to be a handgun, in his right hand, ²⁷ and a Hispanic female is seen in the rear of the store. At 20:53:18 a second male black with glasses enters through the door and appears to have dialogue with the male black holding an object that appears to be a handgun, then subsequently exits the store. The male holding an object that appears to be a moves from view.

²⁶ During this time, there is no clear view of what is in Subject 1's hand and there is no officer depicted in this camera angle.

²⁷ It was later learned that this object was a replica handgun.

		<p>At 20:54:40 a uniformed male officer enters through the south door and is observed raising and pointing his weapon northbound, towards the direction of where the male black subject was standing. The male subject is not seen in the video during this time.</p> <p>The Hispanic female is observed standing in an aisle closest to the north door while looking in the direction of where the male black subject was standing.</p> <p>After the officer points his firearm, smoke is seen coming from the officer's weapon as he appears to fire. The officer appears to crouch down while still pointing his firearm in the same direction. The male black subject then appears within the camera view and is seen falling to the floor. The officer moves towards the subject, grabbing his arm, and then kicks an object down the aisle towards the rear of the store. A second uniformed male officer enters and moves towards the first officer and subject, who are on the floor and physically engaged. Shortly thereafter, several other male and female officers enter the store and join the other officers in physically engaging the subject, and are seen moving about the store.</p> <p>At 21:00:08 a uniformed male Chicago Fire Department (CFD) paramedic briefly appears in and out of view from the left side of the screen. A uniformed female officer stands in front of the refrigerated case for the remainder of the video.</p>
6	Partial view of the point of sale office. The video starts at 20:48:00 hours.	<p>At 20:49:00 a black male enters view from the left of the screen and points an object that appears to be a handgun, at the employee through the turnstile. The subject then paces around the interior of the store. At 20:50:34, and 20:53:00, the subject again points an object that appears to be a handgun into the turnstile's opening and side window, and then continues to move about the store. The male employee is seen crouching behind the counter inside the office.</p> <p>At 20:53:20 a black male, gray hair, glasses, yellow metal chain around neck, black t-shirt enters from the left side of the screen and turns his head to the left several times in the direction of the subject who is holding an object that appears to be a handgun in his right hand, the male leaves after several seconds. The subject then stands near the turnstile.</p>

		<p>At 20:54:41 the subject raises an object that appears to be a handgun towards the interior of the store and is seen falling to the floor. Two uniformed male officers move to the position of the subject and physically struggle with the subject. Shortly thereafter, other officers move into the store and are seen moving in and out of view for the remainder of the video.</p> <p>At 21:00:00 CFD paramedics are seen briefly leaning over the position of the subject then moving from view.</p>
7	Narrow view of the refrigerated beverage case. The video starts at 20:50:55 hours.	<p>At 20:51:05 a Hispanic female is seen passing the refrigerated case and looking inside, then walking back out of view.</p> <p>At 20:54:55 an object that appears to be a handgun comes into frame at the bottom of the screen. Shortly thereafter a female officer enters from the left of the screen and stands over the object that appears to be a , then moves from view. A second female officer stands over the object that appears to be a for the remainder of the video.</p>

A warehouse surveillance video, located at **XXXX N. Cicero Ave.**, is stationary on the outside to the north of the Gas Station on the east side of Cicero Ave. and the camera is pointed westward. The camera view captures an asphalt driveway or alley in the foreground extending diagonally from the bottom left of the frame to the upper right background of the frame. A light-colored barrier or fence runs along the left side of the drive, separating it from the property. To the left of the barrier is a gas pump and a covered structure with illuminated lights. North Cicero Ave. is in the background and further toward the top left of the frame there is a brick building beyond the and a fence that runs along the west side of Cicero. The recording is time-stamped beginning at “10-16-2016 07:43:14 PM” and ending “10-16-2016 08:43:11 PM.”²⁸ There is no audio.

Beginning at 07:57 p.m., the video captures an unmarked police vehicle and a marked police vehicle responding to the location of incident. Two white officers in uniform,²⁹ are observed exiting the unmarked police vehicle and approach the store of the Gas Station. At approximately 7:58 p.m., one of the white, uniformed officers is observed retreating backwards and slightly crouching down while moving west and then south near the east sidewalk of Cicero Avenue. Within seconds, multiple police vehicles, both marked and unmarked, are seen entering and exiting the camera view throughout the duration of the video. The recording also captured the arrival of an ambulance and fire truck. CPD personnel and vehicles remained on the scene until the end of the recording. (Att. 35)

²⁸ The timestamp of this video appears to be one hour behind the actual time of incident.

²⁹ These officers are now known to be Officer A #XXXXX and Officer B #XXXXX.

External **Video footage** from **School**, located at XXXX W. XXXX Street, is stationary on the outside of the building along Cicero Avenue. The camera is facing southeast and pointed slightly downward, with a partial view of Cicero Ave., a partial view of the sidewalk on the west side of Cicero Avenue and a partial view of the front lawn of the School. The video depicts traffic driving north and south on Cicero Avenue. At 7:55 p.m., a marked police vehicle with blue emergency lights activated is observed traveling northbound. Shortly thereafter, multiple police vehicles with their emergency lights activated are observed traveling northbound on Cicero Avenue. The remainder of the video depicts police vehicles with blue lights activated responding to the scene. No further activity is depicted on the video. (Att. 33)

CPD Video Footage, taken from a handheld device by Detective C and Detective A, was taken of Subject 1 on October 18, 2016, at approximately 2:55 p.m. The video is inside of what appears to be a hospital room and depicts Subject 1 laying on a hospital bed while in a robe. Detective A, who identifies himself on the recording, is depicted speaking to Subject 1. Detective A advises Subject 1 of his Miranda Rights and Subject 1 acknowledges. Detective A attempts to question Subject 1 about the incident and Subject 1 either responds with no answer or asks questions to the Detective. The video depicts Subject 1 to be in a state of confusion while at times staring at the Detective with no response. Subject 1 states that he did not wish to be further questioned and the recording comes to an end. (Att. 97)

The **Body Worn Camera (BWC) videos**, from **Officer H Axon 2 #XXXXXX** and **Officer G Axon 2 #X81013093** show the officers responding to the location of the incident and searching for the second male subject. (Atts. 71, 72)

The **Body Worn Camera video, Axon 2 #X81016455** from **Officer E** depicts he and Officer F responding to the location of incident. The audio does not begin until 35 seconds into the video. The video depicts Officer E entering the Gas Station where 6-8 officers attempt to arrest the male subject, now known as Subject 1. Officer E and Officer F proceed to search for a second male subject. At 24:08 Officer E speaks to civilian who claims not to have seen anything, only heard gunshots and a helicopter. (Atts. 73, 74)

The **Body Worn Camera video, Axon 2 #X81015459** from **Officer F** depicts essentially the same information as the BWC of Officer E. In addition, there is blood on the floor and wall to which an officer states something to the effect of “yeah, I shot him.” The rest of the video is searching for a second male subject. (Att. 75)

The **Body Worn Camera video, Axon 2 #X81013996** from **Officer I** captures the aftermath of the shooting on the ground level inside the Gas Station. It additionally shows Subject 1, on the ground inside the Gas Station, surrounded by several officers. An unknown male officer requests for EMS. Officer A is observed exiting the Gas Station and is asked by other officers, who shot? Officer A claims to have shot Subject 1 and is escorted outside. The video depicts the arrival of EMS. At the 00:08:50 mark, Officer I walks up to ambulance “XX” where the video shows Subject 1 on the stretcher. Officer J is inside the ambulance removing Subject 1’s clothing and handcuffing him to the side bars of the stretcher. EMS notifies Officer I that Subject 1 is being transported to the Hospital. Officer J can be seen collecting items

belonging to Subject 1 into an evidence bag. A sergeant tells them they need to inventory the items. (Att. 76)

The **Body Worn Camera video, Axon 2 #XXXXXX** from **Officer J** depicts essentially the same footage as the BWC of Officer I. Furthermore, on Officer J BWC Subject 1 is seen being transported on a stretcher into ambulance “XX.” At the 00:08:44 mark, Officer J walks onto the ambulance and assists in handcuffing Subject 1 onto the side bars of the stretcher. Throughout the ambulance ride to the hospital Subject 1 receives medical attention. (Att. 77)

The **Body Worn Camera video, Axon 2 #XXXXXX** from **Officer K** captures the aftermath of the shooting. The video briefly captures Subject 1 on the ground inside the Gas Station. The rest of the video depicts Officer I searching for the second male subject. (Att. 78)

The **Body Worn Camera video, Axon 2 #XXXXXX** from **Sergeant B** depicts the sergeant at the scene, after the shooting. Sgt. B begins setting up the crime scene and looks for evidence. (Att. 79)

Additional **Body Worn Camera videos** retrieved from Officer L, Officer M, Officer F, Officer J, Officer G, and Officer H do not depict the incident. (Atts. 80, 81, 82, 83, 84, 85, 86, 87, 88)

Evidence Technician Photographs and Video depict the scene and the recovered evidence as well as the officers, subject, and victims. (Atts. 25, 67)

4. Court Documents

According to the **Clerk of the Circuit Court of Cook County** records, under case #XXXXXX, documents that Subject 1 was charged with two (2) counts of Attempted Armed Robbery; one (1) count of Aggravated Battery/Use Deadly Weapon; two (2) counts of Aggravated Unlawful Restraint; six (6) counts of Aggravated Assault/ Peace Officer; and, one count of Possession of a Controlled Substance. On November 17, 2016, Subject 1 entered a plea of Not Guilty to all charges. The case continued and on June 28, 2017, Subject 1 entered a plea of Guilty to Aggravated Unlawful Restraint. On this same day, Subject 1 was found guilty and sentenced to six (6) years at the Illinois Department of Corrections. All other charges were found to be Nolle Prosequi. (Att. 98)

Approved:

Major Case Specialist

Supervising Investigator

III. ANALYSIS

A preponderance of evidence demonstrates Officer C's use of deadly force against Subject 1 was objectively reasonable under the circumstances confronting him and **Within Department Policy**, as outlined by the Chicago Police Department's General Order 03-02-03, III; and the Illinois State statute. Officer C's use of force also complied with applicable constitutional standards.

A. Applicable Rules and Law

1. CPD Policy, Illinois State Statute, & Constitutional Standards

The version of Chicago Police Department General Order 03-02-03, III in effect on October 16, 2016, stated that:

- A. A sworn member is justified in using force likely to cause death or great bodily harm only when he or she reasonably believes that such force is necessary:
 - 1. [t]o prevent death or great bodily harm to the sworn member or to another person, or;
 - 2. [t]o prevent an arrest from being defeated by resistance or escape and the sworn member reasonably believes that the person to be arrested:
 - (a) has committed or has attempted to commit a forcible felony which involves the infliction, threatened infliction, or threatened use of physical force likely to cause death or great bodily harm or;
 - (b) is attempting to escape by use of a deadly weapon; or
 - (c) otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay.

In addition, the use of deadly force is codified under Illinois law at 720 ILCS 5/7-5 (1986). The pertinent part of the statute states that:

. . . a peace officer, or any person whom he has summoned or directed to assist him, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. . He is justified in the use of any force which he reasonably believes to be necessary to effect the arrest and of any force which he reasonably believes to be necessary to defend himself or another from bodily harm while making the arrest. . However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent death or great bodily harm to himself or such other person . . .

Finally, determinations regarding the potential use of excessive force in the course of an arrest, investigatory stop, or other seizure are properly analyzed under the Fourth Amendment's objective reasonableness standard. The question is whether the officer's actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their

underlying intent or motivation. *Graham v. Connor*, 490 U.S. 386, 397 (1989). See *Estate of Phillips v. City of Milwaukee*, 123 F.3d 586, 592 (7th Cir. 2003). The following factors are instructive in making the determination of whether an officer's use of force is reasonable: (1) "the severity of the crime at issue;" (2) "whether the suspect poses an immediate threat to the safety of the officers or others;" and (3) whether he is actively resisting arrest or attempting to evade arrest by flight." *Graham*, 490 U.S. at 396 (citing *Tennessee v. Garner*, 471 U.S. 1, 8-9 (1985)). This reasonableness calculation 'must embody allowance for the fact that police officers are often forced to make split second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.' *Graham*, 490 U.S. at 396-97. Consequently, "when an officer believes that a suspect's actions [place] him, his partner, or those in the immediate vicinity in imminent danger of death or serious bodily injury, the officer can reasonably exercise the use of deadly force." *Muhammed v. City of Chicago*, 316 F.3d 380, 383 (7th Cir. 2002) (quoting *Sherrod v. Berry*, 856 F.2d 802, 805 (7th Cir. 1988) (*en banc*) (omitting emphasis)).

2. Preponderance of Evidence Standard

The standard of proof in administrative cases investigated by COPA is a preponderance of the evidence. A preponderance of evidence can be described as evidence that makes it more likely than not that the conduct complied with Department policy. See *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005) (a proposition is proved by a preponderance of the evidence when it has found to be more probably true than not). If the evidence gathered in an investigation establishes that it is more likely that the conduct complied with Department policy than that it did not, even if by a narrow margin (i.e., at least a 51 percent likelihood that the facts supporting the occurrence of misconduct are true), then the standard of proof has been met.

B. Analysis of Officer C' Use of Deadly Force

1. Prior to arriving at the Gas Station, Officer C received information that a man fitting Subject 1's general description was committing an armed robbery, a violent crime.

Officer C had specific information indicating that Subject 1 was armed and dangerous. Dispatch informed Officer C that two armed black males wearing black shirts were robbing the Gas Station and that one of the black males was inside.³⁰ Officer C explained that when he arrived at the Gas Station and entered the minimart, he observed a black male wearing a black hoodie holding an object that appeared to be a firearm.³¹ COPA finds that under these circumstances, it was reasonable for Officer C to believe that Subject 1 was a committing an armed robbery, a serious crime involving the use of violence.

2. Subject 1's replica firearm reasonably appeared to be an actual firearm

³⁰ Att. 14 at 27-28; Att. 63 at 14-18.

³¹ Att. 63 at 16, 28.

Although Subject 1 did not possess an actual firearm, COPA finds that Officer C reasonably believed Subject 1 possessed an operable firearm. Subject 1's replica firearm had the main characteristics of an operable firearm: (1) it had a handle; (2) a barrel; and (3) a trigger.



Although parts of Subject 1's replica firearm were covered with brown tape,³² Officer C had to make a split second judgment in circumstances which were tense, uncertain, and rapidly evolving and therefore could not closely and carefully examine the replica firearm. Furthermore, Officers B and A and Civilian 2 also believed that Subject 1 possessed an actual firearm during the incident. In addition, Subject 1 certainly held and pointed the replica firearm as though it was real. A reasonable police officer would logically conclude that most people would not point a fake firearm at a police officer possessing an actual firearm due to the life-threatening consequences that are likely to occur.

3. Subject 1 placed Officer C in imminent risk of death or great bodily harm when he lifted the replica firearm and pointed it in Officer C's direction

³² COPA notes that an operable firearm could conceivably be covered with brown tape. In addition, the brown tape on the handle portion of the replica firearm would have been covered partially or totally by Subject 1's hand when he was holding and pointing it.

Officer C told IPRA investigators that after he entered minimart, Subject 1 turned towards him, raised an object that appeared to be a firearm, and pointed the object in his direction.³³ COPA finds Officer C's statement credible. The surveillance footage corroborates that Subject 1 displayed the replica firearm and pointed it in the direction of Officer C.



³³ Att. 63 at 16, 32.



Camera4 (10/16/2016 20:54:42-243)



Camera4 (10/16/2016 20:54:47-763)

Furthermore, both of Subject 1's gunshot entrance wounds were to the front of his body which is consistent with Subject 1 directly facing Officer C. Finally, the reasonableness of Officer C'

conclusion that Subject 1 posed an imminent risk is significantly bolstered by the fact that Officer C was responding to a call of an armed robbery and that Subject 1 matched the general description of the offender.³⁴ Under the totality of the circumstances confronting Officer C, he did not have a reasonable opportunity to provide Subject 1 a warning prior to discharging his weapon as he had no cover and reasonably believed that Subject 1 was pointing an operable firearm directly at him. Because Officer C reasonably believed that the replica firearm was an operable firearm, it was objectively reasonable for Officer C to fear that Subject 1 posed an imminent risk of death or great bodily harm. Therefore, COPA finds it was objectively reasonable for Officer C to discharge his weapon in Subject 1's direction.³⁵

COPA further finds that after Officer C discharged his firearm, Officer C ordered Subject 1 to drop his firearm, but Subject 1 did not comply. Officer C then proceeded to strike Subject 1's hands to disarm him. Officer C's strikes were objectively reasonable as Officer C still reasonably believed that Subject 1 posed an imminent risk of death or great bodily harm to him.

IV. CONCLUSION AND FINDING³⁶

Because Officer C reasonably believed that Subject 1 presented an imminent threat of death to himself and others, Officer C was justified in his use of deadly force against Subject 1. The evidence clearly shows that an officer with similar training and experience would have reasonably, albeit mistakenly, believed that Subject 1 posed an immediate threat of death or serious bodily harm. Accordingly, Officer C's use of deadly force was objectively reasonable and **Within Policy** as outlined by the Chicago Police Department's General Order 03-02-03, III; and the Illinois State statute. Officer C use of deadly force also complied with the Fourth Amendment.

Approved:

Deputy Chief, COPA

³⁴ COPA recognizes that at least some courts have found that in "minimal information cases" officers must gather additional information before using deadly force. *Nicholson v. City of Los Angeles*, 2017 U.S. Dist. LEXIS 162855, *26 (C.D. Cal. Oct. 2, 2017) (discussing cases where officers unreasonably used deadly force on individuals holding replica firearms and noting that "[i]n minimal information cases, police officers must, and indeed we expect them to, accept a certain amount of the risk inherent in taking sufficient time to gather the information that would make the decision to use deadly force objectively reasonable under the circumstances."). This is not a minimal information case. Officer C had justification for being on heightened alert based on the information he had received and the context in which he encountered Subject 1—in the midst of an armed robbery inside a Gas Station.

³⁵ Officer C stated in his interview to IPRA that he mistakenly wrote in his TRR that he provided Subject 1 verbal commands to drop the gun prior to discharging his shots rather than after. Att. 63 at 6-8.

³⁶ This summary report does not address Officer A's use of force. For summary and analysis of Officer A's use of force refer to Log #1083269.